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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/381,385	02/01/2000	PHILIP C. ASHMAN	BWTIUSA	3888

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EXAMINER

PATTERSON, MARC A

ART UNIT	PAPER NUMBER
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1772

DATE MAILED: 12/01/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/381,385

Applicant(s)

ASHMAN ET AL.

Examiner

Marc A Patterson

Art Unit

1772

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 September 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,5,6,12,15-21 and 23-40 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,5,6,12,15-21 and 23-40 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

DETAILED ACTION

REPEATED OBJECTIONS

1. The objection to the specification of record on page 2 of the previous Action is repeated.

REPEATED REJECTIONS

2. The 35 U.S.C. 112, first paragraph rejection of Claims 1, 5 – 6, 12, 15 – 21 and 23 – 35, of record on page 2 of the previous Action, is repeated.

NEW REJECTIONS

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1, 5 – 6, 12, 15 – 21 and 23 – 40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yamada et al. (U.S. Patent No. 4,842,951) in view of Branch (U.K. Patent No. 2295617).

With regard to Claims 1, 6, 15, 24 – 29, 32 and 34 – 36, 38 and 40, Yamada et al disclose a method for storing a flavored good (food product; column 1, lines 30 – 38) comprising the step of providing a laminated material (a laminate sheet is provided; column 2, lines having a core barrier layer (gas permeation resistant resin layer; column 3, lines 21 – 28) sandwiched between an outer layer and at least one further layer (polyolefin based resin layer; column 3, lines 21 –

28), the further layer being formed from a non – polar thermoplastic polyolefin resin (polyethylene; column 4, lines 15 – 16) filled with an inorganic filler comprising calcium carbonate and talc (column 3, lines 47 – 49) which is a platelet filler (plate crystal; column 3, lines 57 – 61), the core barrier layer comprising a vapor impermeable non – polyolefin (ethylene vinyl alcohol; column 3, lines 29 – 44) as the only resin in barrier layer (it is used as the gas – permeation – resistant resin, therefore singular; column 3, lines 29 – 31) and the barrier layer therefore consists essentially of the vapor impermeable non – polyolefin, the barrier layer having a thickness less than 25 microns (10 microns; column 3, lines 45 – 46); and storing a flavored good in a container formed from the laminate material (the material is used to produce package containers for food products; column 2, lines 45 – 50) such that the further layer of the non – polar thermoplastic polyolefin resin filled with talc extends between the flavored good and the core barrier layer (column 5, lines 27 – 31); the amount of inorganic filler in the further layer, comprising calcium carbonate and talc, is 30% (column 4, lines 20 – 22) and the layer is therefore filled with less than 30% talc, which includes a range from 5 to 15% talc; Yamada et al also therefore disclose a laminate material having the laminate layer structure and a container formed from the laminate. With regard to the claimed aspect of the barrier layer being a non – platelet filled layer, Yamada et al do not disclose a platelet filler; the claimed aspect of the barrier layer being a non – platelet filled barrier layer therefore reads on Yamada et al. With regard to the claimed aspect of the container reducing absorption of flavoring, Yamada et al do not disclose absorption of flavoring; the claimed aspect of storing the good being a method of reducing absorption of the flavoring therefore reads on Yamada et al, as any previous absorption is reduced to zero; because the laminate is made into a container, the layer also provides a

stiffness which allows the laminate to have a relatively thin thickness. However, the claimed aspects of the talc filled layer reducing absorption and providing stiffness are directed to intended uses of the layer, which are given little patentable weight because Yamada et al disclose a laminate having a laminate material having the claimed structure as discussed above. Yamada et al fail to disclose a talc which is high purity talc having a CIE whiteness of at least 40, an aspect ratio of at least 5 and an average aspect ratio of from 16 to 30.

Branch teaches the use of a talc having a CIE whiteness of at least 40, an aspect ratio of at least 5 and an average aspect ratio of from 16 to 30 (page 5, second paragraph; page 6, third paragraph; Abstract) for the purpose of obtaining a container which provides a good oxygen barrier (page 3, third paragraph) and a talc which is a high purity talc (purer grades of talc, therefore talc having high purity, is preferred; page 5, third paragraph) for the purpose of obtaining talc which has a high degree of whiteness without using a pigment (page 5, third paragraph). Therefore, one of ordinary skill in the art would have recognized the advantage of providing for the high purity talc having a CIE whiteness of at least 40, an aspect ratio of at least 5 and an average aspect ratio of from 16 to 30 of Branch in Yamada et al, which is a container having an oxygen barrier, depending on the desired oxygen barrier and whiteness of the end product.

It therefore would have been obvious for one of ordinary skill in the art at the time Applicant's invention was made to have provided for a talc having a CIE whiteness index of at least 40, which includes 45, an aspect ratio of at least 5 and an average aspect ratio of from 16 to 30 in Yamada et al in order to obtain a container which provides a good oxygen barrier and whiteness without the use of a pigment as taught by Branch.

With regard to Claims 5, 17 and 23, the further layer disclosed by Yamada et al is spaced from the inner, and therefore internal, surface of the laminated material by an additional layer of non – polar thermoplastic material (polyolefin based resin layers which are on the surfaces of the laminated material; column 3, lines 21 – 28).

With regard to Claim 12, the additional layer disclosed by Yamada et al is filled with a platelet filler (containing substantially no inorganic filler, therefore containing and therefore filled with a very small amount of platelet filler.

With regard to Claim 16 the further layer disclosed by Yamada et al is adjacent the barrier layer and is adhered thereto by a tie layer (adhesive layer; column 3, lines 22 – 28).

With regard to Claims 18 – 19 and 30 – 31 and 33, the thickness of the further layer disclosed by Yamada et al is 50 microns (column 3, lines 45 – 46).

With regard to Claim 20, the further layer disclosed by Yamada et al comprises high density polyethylene (column 3, line 66).

With regard to Claim 21, the further layer disclosed by Yamada et al comprises 30% inorganic filler (column 4, lines 20 – 23), and therefore comprises 70% high density polyethylene, which is a major proportion of high density polyethylene.

With regard to Claims 37 and 39, the additional layer disclosed by Yamada et al comprises the medium density polyethylenes (column 3, lines 65 – 68) and therefore comprises linear medium density polyethylene.

ANSWERS TO APPLICANT'S ARGUMENTS

5. Applicant's arguments regarding the 35 U.S.C. 112 first paragraph rejection of Claims 1, 5 – 6, 12, 15 – 21 and 23 – 35 and 35 U.S.C. 103(a) rejection of Claims 1, 5 – 6, 12, 15 – 21 and 23 – 35 as being unpatentable over Yamada et al. (U.S. Patent No. 4,842,951) in view of Branch (U.K. Patent No. 2295617), of record in the previous Action, have been carefully considered but have not been found to be persuasive for the reasons set forth below.

Objection to Specification / Rejection of Claims Under 35 USC 132 and 35 USC 112 (first paragraph)

Applicant argues, on page 9 of the remarks of September 10, 2004, that the present application provides support for the limitation '5% to less than 30%' because the present application discloses the use of 15%, and 15% is clearly less than 30%.

However, the phrase 'less than 30%' is clearly not limited to 30%, but includes other values between 15% and 30% that are not disclosed in the application. The new matter rejection is therefore repeated above. The new matter is considered, however, in the new rejection above.

Rejection of Claims Under 35 USC 103(a)

Applicant also argues, on page 12, that Yamada et al teach that the ideal talc content is 60% by weight and that the skilled person should avoid lowering the talc content of the specified resin layer to less than 30% by weight.

However, as stated above, the amount of inorganic filler in the further layer, comprising calcium carbonate and talc, is 30% (column 4, lines 20 – 22) and the further layer is therefore filled with less than 30% talc by weight.

Applicant also argues on page 12 that in view of the teachings of Yamada et al, the present invention achieves unexpected results, because the laminate material of the present invention has been found to be heat resistant and to have sufficient strength to make molded articles such properties; the present invention, Applicant argues, achieves unexpected results with lower talc contents.

However, as stated above, Yamada et al teach a layer that is filled with less than 30% talc by weight.

Applicant also argues, on page 13, that the construction of the claimed invention is not disclosed by Yamada et al because Yamada et al specifically discloses that the polyolefin contain polypropylene.

However, it is unclear where the disclosure is made, in Yamada et al, that the layer is limited to a layer that contains polypropylene.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marc A Patterson whose telephone number is 571-272-1497. The examiner can normally be reached on Monday - Friday, 8:30 AM - 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on 571-272-1498. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Marc Patterson 11/29/04

Marc A Patterson, PhD.

Examiner

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